

EUGENE FOX

IBLA 82-338

Decided March 11, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, denying a notice of intention to hold unpatented mining claims. U MC 139499 through U MC 139535.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Assessment Work

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of a notice of intention to hold mining claims only with BLM does not constitute compliance either with the recordation requirements of the Act or those in 43 CFR 3833.2-3.

APPEARANCES: Eugene Fox, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Eugene Fox appeals the October 26, 1981, decision of the Utah State Office, Bureau of Land Management (BLM), which denied a petition received September 22, 1981, 1/ for deferment of annual assessment work and a notice of intention to hold the unpatented Cottonwood Nos. 1 through 18, North Star

1/ The instrument filed Sept. 22, 1981, is a photocopy of an instrument filed with BLM on Dec. 29, 1980, with only the year being changed from 1980 to 1981.

Nos. 1 through 6, Red Star Nos. 1 through 8, Lee Bird No. 1, Karen No. 1, and Becky No. 1 lode mining claims, U MC 139499 through U MC 139535, 2/ because the petition does not meet the statutory or regulatory requirements in 30 U.S.C. § 28b (1976), and 43 CFR 3852.1. 3/

Appellant states the claim owners have deferred doing assessment work because they desire to strip the overburden from the claims and mine the minerals by open-pit method, and they have not been given approval in writing by BLM for such activities. Appellant also states the claimants were twice confronted by Indian police when they were on the claims, which they believe are not within any Indian reservation.

We believe a resume of the recent history of the area in which the claims are situated will be helpful in understanding this case.

The area of T. 8 S., R. 20 E., Salt Lake meridian, occupied by the claims was included in an extension of the Uintah and Ouray Indian Reservation effected by the Act of March 11, 1948, P.L. 440, 80th Congress, 62 Stat. 72. The enlargement of the reservation did not extend to or include deposits of uranium, thorium, or other materials reserved to the United States by the Atomic Energy Act of 1946, 60 Stat. 755, 762, and included surface rights only in lands withdrawn for oil shale by Exec. Order No. 5327 of April 15, 1930. The oil shale withdrawal did not preclude the location of mining claims for metalliferous minerals. Circular No. 1220, 53 L.D. 127 (1930).

The claims at issue were located in August 1954, February and March 1956, and May 1959. The location notices described the claims variously as valuable for gold, silver, copper, lead, uranium, and vanadium. The location notices for claims naming uranium and vanadium indicated that a uranium lease was being sought pursuant to AEC Circular No. 7.

Pursuant to the requirements in section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), copies of the notices of location and a notice of intention to hold mining claims were submitted to BLM on October 15, 1979. There is no indication that the notice of intention to hold was recorded in the records of Uintah County, Utah. The notice stated "[A]ssessment work is underway and will be completed pending

2/ The claims are situated in secs. 23, 24, 25, 26, and 27, T. 8 S., R. 20 E., Salt Lake meridian.

3/ The BLM decision is not a model of clarity. It recites the serial numbers assigned to all of the claims recorded by appellant in 1979, even though the K B Nos. 1 and 2, U MC 139531 and U MC 139532, are not mentioned in the instruments filed Sept. 22, 1981, or Dec. 29, 1980. As there appears to have been no filing of evidence of assessment work or a proper notice of intention to hold these claims in 1980, BLM should have declared them abandoned and void at an earlier date.

The instruments are signed by LaVar C. Fox, Eugene V. Fox, N. R. Schmittroth, Wallace S. Devey, and Anona Fox Marks.

written decision of the BLM, as to whether we can strip overburden (8'-12') from the mineral deposit. This operation, if feasible, would require an open pit mining operation."

BLM received letters from the claimants December 29, 1980, and September 22, 1981, indicating a notice of intention to hold the claims until BLM will authorize, in writing, the removal of overburden by strip mining. Neither letter appears to have been recorded in Uintah County, Utah. The record is silent as to any action by BLM on the notices of intention filed in 1979 and 1980.

Section 314 of FLPMA requires owners of unpatented mining claims located before October 21, 1976, to record with the proper office of BLM a copy of the location notice of the claim as officially recorded in the office having local jurisdiction, and a notice of intention to hold the claim or evidence of assessment work performed on the claim, on or before October 22, 1979, and to file a notice of intention to hold or evidence of assessment work prior to December 31 of each calendar year thereafter.

The requirements for filing a notice of intention to hold unpatented mining claims are set out in 43 CFR 3833.2-3. Essentially, the notice must be a legible reproduction or duplicate of a letter signed by the owners of the claim or their agent, and be recorded in the same local jurisdiction as the notice of location of the claim, setting forth the serial number assigned by BLM to the claim, the current address of the owners, a statement that the claim is being held for valuable minerals therein, a statement that the owners intend to continue development work and a statement of the reasons why the annual assessment work has not been performed.

[1] As provided by section 314 of FLPMA, where the instruments required by the section are not timely and correctly filed, the claims at issue are conclusively deemed to be abandoned. 43 U.S.C. § 1744(c) (1976), 43 CFR 3833.4. None of the instruments purporting to be a notice of intention to hold the claims at issue reflects that it was recorded in Uintah County, Utah, as required by the statute and regulations. BLM should have declined to accept any of the notices as satisfactory compliance with the requirements, and should have declared the claims to be abandoned and void. Robert W. Hansen, 46 IBLA 93 (1980). When a claimant fails to file a notice of intention to hold in the local jurisdiction where the claims were recorded, the BLM State Office properly should hold the claims to have been abandoned and to be void. Robert W. Hansen, *supra*; see Donald H. Little, 37 IBLA 1 (1978); Ronald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978). The BLM decision is modified to show this result.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an

administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Major G. Atkins, 60 IBLA 284 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Thomas F. Byron, 52 IBLA 49 (1981).

The BLM decision conveys the impression that claimants' letter was for deferment of annual assessment work, in addition to being a notice of intention to hold. Although 30 U.S.C. § 28b (1976) provides that the Secretary of the Interior may grant deferment of assessment work on unpatented mining claims, it is incumbent upon the claimant to show by satisfactory evidence that the mining claims are surrounded by lands over which a right-of-way for the performance of the assessment work has been denied or is in litigation or is in the process of acquisition under state law, or that other legal impediments exist which affect the right of the claimants to enter upon the surface of the claims or to gain access to the boundaries thereof. The implementing regulations at 43 CFR 3852.2 require the petition for deferment to be filed for recordation in the office where the location notice was recorded, to be accompanied by a service charge of \$10, and to set forth the one year period for which the deferment is sought. There is nothing in the record before us indicating that any of the statutory impediments have denied claimants access to these claims, or that the requirements of the regulations were satisfied. Nor do we read the letter as a request for deferment.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed, as modified.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

